

1 David M. Bass (State Bar No. 117199)
David N. Schultz (State Bar No. 123094)
2 DAVID M. BASS & ASSOCIATES
1900 Avenue of the Stars, Suite 200
3 Los Angeles, California 90067
Telephone: (310) 789-1152
4 Facsimile: (310) 789-1149
E-mail: dbass@basslawla.com

5
6 Attorneys for Defendant and Counterclaim Plaintiff
USPA ACCESSORIES, LLC dba CONCEPT
7 ONE ACCESSORIES

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 BLUE MARLIN CORP.,
13 Plaintiff,
14 vs.
15 USPA ACCESSORIES, LLC dba
CONCEPT ONE ACCESSORIES,
16 Defendant.

Case No. C 07-03368-CRB
Hon. Charles R. Breyer

**STIPULATION DISMISSING FIRST
AMENDED COMPLAINT AND CROSS-
COMPLAINT WITH PREJUDICE;**

[PROPOSED] ORDER

17
18 USPA ACCESSORIES, LLC dba
CONCEPT ONE ACCESSORIES,
19 Counterclaim
20 Plaintiff,
21 vs.
22 BLUE MARLIN CORP., a California
corporation; and ROES 1 to 25,
23 inclusive,
24 Counterclaim
Defendants.

Action Removed: June 27, 2007
Trial Date: Not set

25
26 ///

27 ///

28 ///

1 **TO THE COURT, AND TO ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 This Stipulation is made pursuant to Fed. R. Civ. P. 41(a)(1) and 41(c) between
4 Defendant and Counterclaim Plaintiff USPA ACCESSORIES, LLC (“USPA”), on the
5 one hand, and Plaintiff and Counterclaim Defendant BLUE MARLIN CORP. (“Blue
6 Marlin”), on the other hand, through their undersigned counsel of record, with reference
7 to the following:

8
9 A. On June 15, 2006, Blue Marlin commenced an action against USPA in the
10 Superior Court of the State of California in and for the County of San Francisco, entitled
11 *Blue Marlin Corp. v. USPA Accessories, LLC, Case Number CGC-06-453170* (the “State
12 Court Action”). Blue Marlin alleged causes of action against USPA for breach of
13 contract, account stated and open book account.

14 B. On or about December 14, 2006, USPA filed a Cross-Complaint against
15 Blue Marlin in the State Court Action (the “Cross-Complaint”). The Cross-Complaint
16 alleged causes of action against Blue Marlin for breach of contract, breach of the
17 implied covenant of good faith and fair dealing, fraud, negligent misrepresentation,
18 relief based on rescission, and failure to register franchise offer.

19 C. On or about February 5, 2007, Blue Marlin filed an Answer to the Cross-
20 Complaint in the State Court Action.

21 D. On or about June 21, 2007, Blue Marlin filed a First Amended Complaint
22 for Damages and Injunctive Relief in the State Court Action (the “First Amended
23 Complaint”). The First Amended Complaint added claims for federal copyright and
24 trademark infringement against USPA.

25 E. On or about July 3, 2007, USPA filed a Notice of Removal of the State
26 Court Action to Federal Court. The State Court Action was assigned to the Honorable
27 Charles R. Breyer and was designated as Case No. C 07-3368 CRB in the United States
28 District Court for the Northern District of California, San Francisco Division.

1 F. On or about July 12, 2007, USPA filed an Answer to the First Amended
2 Complaint in this action.

3 G. On August 13, 2007, third party creditors of Blue Marlin commenced an
4 involuntary bankruptcy proceeding against Blue Marlin pursuant to Chapter 7 of the
5 United States Bankruptcy Code (the "Chapter 7 Proceeding").

6 H. On or about April 11, 2008, the Chapter 7 Proceeding was converted into a
7 proceeding pursuant to Chapter 11 of the United States Bankruptcy Code (the
8 "Chapter 11 Proceeding"). The Chapter 11 Proceeding is pending before the Honorable
9 Dennis Montali in the United States Bankruptcy Court for the Northern District of
10 California, San Francisco Division (the "Bankruptcy Court"), Case No. 07-31041.

11 I. On or about August 1, 2008, USPA filed a Motion for Relief from the
12 Automatic Stay in the Bankruptcy Court (the "Motion"). The Motion came on for
13 hearing before the Bankruptcy Court on August 21, 2008. At the conclusion of the
14 hearing, the Bankruptcy Court granted the Motion.

15 J. On September 4, 2008, the Bankruptcy Court entered an Order Granting
16 Motion of USPA Accessories, LLC for Relief from Automatic Stay (the "Order"), lifting
17 the stay and thereby permitting USPA to prosecute its Counterclaims in this action.

18 K. The parties now wish to dismiss **with prejudice** all claims brought against
19 each other, including: (i) the causes of action alleged by Blue Marlin against USPA in
20 the First Amended Complaint; (ii) the causes of action alleged by USPA against Blue
21 Marlin in the Cross-Complaint; and (iii) any claims that are alleged or could be alleged
22 in the Bankruptcy Court.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Accordingly, the parties hereto hereby stipulate and agree as follows:

- 2 1. Blue Marlin hereby dismisses the First Amended Complaint against
3 USPA, and all causes of action alleged therein, **with prejudice.**
4 2. USPA hereby dismisses the Cross-Complaint against Blue Marlin, and all
5 causes of action alleged therein, **with prejudice.**
6 3. This Stipulation shall bar the parties from proceeding with any claims
7 against one another in any proceedings in the Bankruptcy Court.

8
9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 Dated: September 19, 2008

DAVID M. BASS & ASSOCIATES

12
13 By: 

David M. Bass
Attorneys for Defendant and Counterclaim
Plaintiff USPA ACCESSORIES, LLC

14
15
16 Dated: September 18, 2008


SOMMERS LAW GROUP

17
18 By: 

Stephen A. Sommers
Attorneys for Plaintiff and Counterclaim
Defendant BLUE MARLIN CORP.

19
20
21
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23
24 Dated: September 19, 2008



1 G:\USPA-Concept One\Blue Marlin\Pleadings\Pleadings - Federal\Stipulation to Dismiss-v2.doc

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28